IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/1/2005

C O R AM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

W.P.No.19009 of 1996

Mohammed Hanifa .. Petitioner

Vs.

1. The Presiding Officer,
   Labour Court,
   Coimbatore.

2. Pandalur Indco Tea Factory,
   Pandalur rep. by its
   Special Officer .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the relief as stated therein.

For petitioner : Mr.S.Ravi for
M/s.Gupta & Ravi

For respondents : Mr.L.Dwarakanathan for R.2.

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O R D E R

This writ petition has been filed praying to issue a Writ of Certiorari calling for the records of the award dated 2.11.1995 made in I.D.No.366 of 1994 on the file of the first respondent and quash the same insofar as it relates to denial of backwages for the period of non-employment.

2. The petitioner/workman challenges the award passed by the Labour Court, Coimbatore, relating to the denial of backwages for the period of non-employment under the second respondent. The petitioner herein and another were charged for certain alleged misconduct, regarding which an enquiry was ordered to be held on 5.3.1994 in which the petitioner appeared and the enquiry date was

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adjourned to 19.3.1994. The petitioner applied for medical leave from 8.3.1994 to 6.4.1994 and the same was sanctioned by the management, but it was not brought to the notice of the enquiry officer. Even thereafter from 7.4.1994 to 6.5.1994, he extended the leave period, besides writing a letter seeking postponement of the enquiry, in spite of which, they proceeded to hold an exparte enquiry on 9.4.1994 and a finding was given on 16.4.1994 finding the petitioner guilty of the charges levelled against him, though admittedly the petitioner was on leave. Thereafter, the second respondent Management passed an order on 30.4.1994 dismissing the petitioner/workman from service. Aggrieved, the petitioner herein raised a dispute before the first respondent and an award was passed reinstating the petitioner with continuity of service, but without backwages and challenging this portion of the award of denial of backwages, the present writ petition has been filed.

3. During arguments, the learned counsel for the petitioner, besides narrating the facts and events, would specifically point out that in respect of similarly placed persons, the petitioner alone has been singled out and discriminated because as the secretary of the Workmen Committee, he had to espouse the cause of the fellow workmen and therefore, the management started harassing him with frequent memos. and show cause notices on flimsy grounds. Learned counsel would also submit that there is a gross violation of Section 33(2)(b) of the Industrial Disputes Act, 1947 and the Apex Court has also held that where there is violation of 33(2)(b) of the I.D. Act, the order of dismissal is void and inoperative and would refer to a decision of the Apex Court reported in 2004 (1) LLN 594 (P.Balasundaram v. P.O., Labour Court) wherein it is held as follows:-

> "When S.33 specifically mandates the employer to seek prior permission under S.33(1) or to seek an approval under S.33(2)(b), merely because the enabling provision of S.33A entitling the employees to lodge a complaint for non compliance of the provisions of S.33, the protection accorded to the employees under S.33 for imposing the punishment of dismissal or otherwise of the workmen when the dispute before the Conciliation Officer cannot be taken away and the right for approval as a precondition for dismissal or discharge could be deprived. When once this position of law is accepted and factually such objection was raised by the employees and the same

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was rejected only on the ground that the employees have to approach the very Conciliation Officer under S.33A by making a complaint, I find no merit in the submissions of the learned counsel for management in this regard. The finding of the Labour Court that is contrary to the law laid down by the Apex Court cannot be sustained.

"Once this court comes to the conclusion that the orders of dismissal were made without any approval under S.33(2)(b) of the Act, the award of the Labour Court in directing the discharge of the employees with compensation only cannot be sustained."

Learned counsel would submit that once violation of Section 33(2)(b) is there, the order of dismissal is void ab initio and this point has been specifically made in the claim statement and even though this plea was raised before the labour court, there was no finding to that effect.

4. Yet another submission of the learned counsel is on the ground of discrimination. The pertinent point is that discrimination is attempted to by the management as among the persons similarly placed and the petitioner alone has been singled out and proceedings were initiated against and there is no explanation as to why he alone has been singled out and he would cite a judgment of this Court reported in 1993 I LLJ 1148, in his favour wherein it is held as follows:-

"When evidence with regard to the misconduct of a number of workman is identical, the employer must give rational or reasonable explanation for awarding different punishments to the different workman on the same misconduct. If different workman are similarly placed with regard to the evidence and if the workman are covered by the same set of facts and circumstances, the employer cannot single out a particular workman for discriminatory treatment while awarding punishment. If some of the workman are arbitrarily weeded out for discriminatory treatment, the court will not hesitate to frown upon such discriminatory treatment."

5. Learned counsel would also cite a judgment of the Apex court reported in (2002) 2 SCC 244 (Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., v. Ram Gopal Sharma) wherein it is held:-

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"The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. Moreover, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further, any employer who contravenes the provisions of Section 33 invites a punishment under Section 31 (1). This penal provision is again a pointer of the mandatory nature of the proviso. In other words, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(b) is to be operative. Taking a view to the contrary would defeat the very purpose of the proviso and render the same meaningless. It is well-settled rule of interpretation that no part of a statute should be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33(2)(b) is not void or inoperative. The protection afforded to a workman under the said provision cannot be taken away. Otherwise the employer may with impunity discharge or dismiss a workman.

The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merits and as such the order of dismissal of discharge does not become void or inoperative unless set aside under Section 33-A, cannot be accepted. Not making an application under Section 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b)."

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6. Learned counsel would further submit that the whole proceedings would clearly show the vindictive action perpetrated on the part of the management in singling out the petitioner which has been clearly arrived at by the labour court and moreover a person who was on leave, unless it is denied and proved that he was not on leave, no such exparte order could be passed against him and therefore, the petitioner is entitled to the relief prayed for by him.

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7. In reply, the learned counsel for the second respondent management would submit that the labour court was right in denying the backwages for the reason that the employee concerned was charge sheeted for certain misconduct and the labour court has also held that the petitioner, along with other employees, are jointly responsible for the delinquency and has ordered a lesser punishment of denial of backwages to the petitioner. Learned counsel would also submit that this is the final award passed on merits and there is a preliminary award passed by the labour court, which is not challenged.

8. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what could be assessed is that the award passed by the lower Court relating to the denial of backwages for the period of non-employment under the second respondent has come forward to file the above writ petition on such grounds extracted supra.

9. A careful perusal of the award passed by the lower Court, the labour Court would find that the petitioner cannot be singled out and accused of having committed the delinquency and it is the combined responsibility of many as it came to be proved from various documents such as M.Ws.15 and 16 and even from M.Ws. 11 and 12 would ultimately decide that the petitioner cannot be singled out and accused of having committed any offence of that sought as he was charged by the management.

10. The labour Court would further find that showing M.Ws.1 to 8 series of documents, the disciplinary authority has arrived at the conclusion that the petitioner has committed delinquency without considering the other aspects involved in the case which are vital for consideration and therefore, the labour Court would validly arrive at the conclusion to hold that it is erroneous on the part of the Management to have come forward to accuse the petitioner and proceeded against him and therefore, would order reinstatement of the petitioner in service but without backwages.

11. The flimsy reason assigned on the part of the labour Court while ordering reinstatement of the petitioner denying the backwages, is that in the discharge of responsibilities along with others, the petitioner has also been slack in his duties and therefore, for the days the petitioner was not in service, the punishment of denial of backwages will serve the ends of justice. The conclusion

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arrived at by the labour Court is not acceptable, since it is the big question as to what is the punishment that has been meted out for all those who have been accused of having committed the same offence along with the petitioner, against whom absolutely no action was initiated by the Management at all. The simple answer is that since the petitioner also sails along with the other employees, he cannot be discriminated against and therefore, since the Management has not bothered about initiating any action against all those who have been responsible for the commission of the delinquency, it is only proper not to impose any punishment on the petitioner alone and therefore, the denial of backwages ordered by the labour Court is illegal and improper. Since no other valid or proper reasons have been assigned by the labour Court for having denied the backwages, this Court is of the view that it is only proper to allow the above writ petition and the same is ordered accordingly.

In result,

(i). the above writ petition succeeds and the same is allowed.

(ii). So far as the award dated 2/11/1995 made in I.D.No.366 of 1994 by the Presiding Officer, Coimbatore, is concerned, denial of the backwages for the petitioner is set aside.

(iii). Instead, it is ordered directing the petitioner to be reinstated with all backwages and attendant benefits.

(iv). No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

gs/mvs.

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To

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   Labour Court,
   Coimbatore.

2. The Special Officer
   Pandalur Indco Tea Factory,
   Pandalur, Nilgiris Dist.

+ 1 CC to M/s.Gupta & Ravi, Advocate SR NO 2441

+ 1 CC to Meenakshi Sundaram, Advocate SR NO 2665

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